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RHMFISS/USNMR SHAPE BE PRIORITY  
RUCNDT/USMISSION USUN NEW YORK PRIORITY 0967  
RUEHVEN/USMISSION USOSCE PRIORITY  
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C O N F I D E N T I A L SECTION 01 OF 05 USNATO 000315

SIPDIS

E.O. 12958: DECL: 07/19/2019

TAGS: [NATO PREL MOPS AE AF](#)

SUBJECT: NATO AWACS IN THE UAE TO SUPPORT ISAF - LEGAL  
HURDLES AND BALANCING PRIORITIES

Classified By: A/POLAD Hoot Baez  
for reasons: 1.4 (b) and (d).

¶1. (C) Deputy Assistant Secretary General for Operations Lawrence Rossin on July 20 briefed Allies in the Political Committee about difficulties and potential opportunities in his negotiations with the UAE regarding the potential of basing NATO AWACS at al-Ain airbase in support of the ISAF operation in Afghanistan. Rossin suggested that the balance between legal risk for NATO personnel operating in the UAE and the management of mortal risk for NATO's women and men fighting in Afghanistan may require that nations adopt a more flexible approach. Several Allies reacted positively to Rossin's briefing. The UK asserted that NATO's history of seeking agreements in the Gulf that were acceptable to all Allies had led to multi-year negotiations that had generally led to the conclusion of no agreement rather than the adoption of a favorable one. Canada and Italy agreed that an urgent operational need makes conclusion of this agreement imperative.

¶2. (C) Rossin intends, within the scope of his role as the NATO negotiator, to draft and forward some ideas to both Allies and the UAE on such a "no commitment" basis ) i.e. sample text that explicitly does not presume to represent a position confirmed acceptable to Allies. Rossin underlined that this "no commitment" basis would rapidly test the veracity of a new UAE claim of potential flexibility. He argued that, should the UAE be unable to follow through with any type of compromise on jurisdiction, it is essential that NATO discover this as soon as possible in order to allow the Alliance to quickly begin seeking alternative basing arrangements.

¶3. (C) Comment: Given the imperatives of the immediate operational need for AWACS support in Afghanistan, and the non-binding nature of Rossin's future "no commitment" text, PolOff joined Allies in declining to use this meeting to request Rossin abandon his course of action pending a full legal review. Rossin plans to circulate this text to both Allies and the UAE early Brussels time on July 22. Unless instructed otherwise USNATO will not take steps to attempt to prevent circulation of this text, and will forward it to EUR/RPM for immediate consideration by the Interagency in advance of a July 27 meeting of NATO's Political Committee which will consider next steps and initial feedback from all sides. End comment.

14. (C) The full text of DASG Rossin's introductory remarks follows:

Begin text:

SPEAKING NOTES OF THE OPS DASG/OPS ON THE MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE UAE AND NATO ON PROVIDING SUPPORT FOR THE NATO PERSONNEL DURING THEIR TEMPORARY STATIONING IN THE TERRITORY OF THE UAE

Thank you, Martin, and let me also express my appreciation to Political Committee members for coming together on short notice for this briefing.

I did not want to lose any time providing this briefing, since the requirement to provide adequate air traffic control and communications capability in Afghanistan has been flagged as so critical by SACEUR and COMISAF, and indeed by many nations, and this UAE effort is a key piece of that. This is all the more so given the inability to launch interim operations from Konya due to difficulties getting overflight clearances from two countries en route, difficulties that may take long to overcome, if at all.

I hope you will forgive me for talking at length, but we have reached the stage where there are fundamental choices to be made by nations, and important balancing of equities and risk management considerations. After I conclude, I will look

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forward to Political Committee members' comments and questions, which will help inform further IS and NMA work.

It may be recalled that I led a NATO team for a first round of discussion ) and I use the word "discussion" advisedly ) in Abu Dhabi in mid-February. Those discussions allowed us to set out our basing request as well as to present an initial, pretty standard NATO text for a basing agreement. Subsequent to those discussions, two important events occurred:

The UAE provided a draft agreement which, the Political Committee will recall, was problematic in some aspects on which you gave us comments and guidance;

and

The UAE invited NATO to survey al-Ain airbase as its proposed location for AWACS basing; the site survey yielded a very positive assessment of the suitability of al-Ain for NAEW&C requirements.

Last week in Abu Dhabi, I led the second round of negotiations on NATO's request for AWACS basing in the UAE, and specifically on a basing agreement, with the UAE authorities ) and I use the word "negotiations" advisedly, different from "discussions" as in the first meetings. I was joined by our Legal Advisor, Baldwin de Vidts, by the new Commander of the NATO Airborne Early Warning and Control Force, Major General Steve Schmidt, and by Col. Enrico Ercoli of NAEW&C HQ and Jon Hill of my Directorate.

We were warmly received. The UAE delegation was well-prepared, constructive and business-like throughout, and all members of my delegation contributed importantly to our negotiating work.

It was clear to me and to all members of my delegation that the UAE is serious in its disposition to permit the basing of NATO AWACS aircraft and personnel to support ISAF operations in Afghanistan. It is serious in its desire to conclude a basing agreement. This willingness had been stated to NATO by the Crown Prince and UAE official on previous occasions, but it became concretely manifest in the dynamic of this

negotiating round. This same willingness to work with NATO is already operationalized in UAE basing and transit support for Afghanistan-related operations of a number of individual NATO nations and partners.

At the same time, the UAE side emphasized that it had, and it clearly does have, some firm principles and parameters that govern its scope to negotiate a document, which NATO must take into full account if document is to be concluded.

We left Abu Dhabi fairly sure that we can get NATO AWACS aircraft based at al-Ain airbase to support ISAF's women and men fighting in Afghanistan, and probably pretty quickly, if we are as willing to be flexible in accommodating certain UAE boundaries of scope to agree as individual nations have been to enable their national operations there.

Some general observations:

First of all, the head of the UAE delegation let us know that while the UAE is prepared to offer a wide range of services and facilities, they cannot do this for free. They will expect reasonable payment for many services that will be provided.

Secondly, the UAE delegation head stated their position that an agreement with NATO, being an inter-governmental organization, was different to an agreement developed bilaterally with a nation. For this reason, they stated their inability to entitle the document as an "Agreement," and hence their preference for the term "Memorandum of Understanding."

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That said, he explained to us, and assured us very specifically, that this document signed between the UAE Armed Forces General Headquarters would be a document legally binding on both Parties to the same degree as an "Agreement" ) the UAE as well as NATO. Pressed by us, he confirmed that the General Headquarters of the UAE Armed Forces was duly authorized to negotiate and sign this document on behalf of the Government of the UAE, and that the GHQ would be committed to ensuring and facilitating implementation of those elements engaging the authorities of other agencies of the UAE.

There is a further advantage in that a "Memorandum of Understanding" would not need to undergo drawn-out UAE ratification procedures and, we were informed, thus would enter into full effect on the date of signature, whereas an "Agreement" would need to go through full government processes and ratification that can take considerable time.

Thirdly, he emphasized that there cannot be conflict between the scope and terms of an agreement concluded with NATO and the bilateral agreements in force between the UAE and several NATO member states. The UAE is not willing to make arrangements with NATO that are inconsistent with, or more generous than, those it has agreed with various NATO nations separately. This is the most critical factor framing our negotiations with the UAE, the factor on which achieving an agreement or not depends. I will return to that later in my presentation.

Now let me get into some detail.

Our working document was the draft as presented by the UAE and circulated for this committee's attention some weeks ago.

Our negotiating basis was a commentary document which the Legal Advisor, supported by my Directorate, drew up on the UAE draft. It took into account the comments received from nations following the circulation of that UAE draft. We sent that commentary document to the UAE several weeks ago in the course of proposing this most recent round of negotiations.

Working on that basis, discussions went very smoothly on most of the Articles. As a general observation, the UAE side took on board many of the observations we had made in the commentary document. We ended our visit with a nearly complete ad ref text that takes into account your nations' comments, and which we were told should be acceptable to the UAE's higher authorities.

It will surprise none of you ) it surprised none of the NATO diplomats whom we debriefed at the Turkish Ambassador's residence Wednesday afternoon ) that the one area where we experienced significant difficulty and could reach no closure was that of jurisdiction.

You will recall that the draft text provided by the UAE asserted full and exclusive jurisdiction for the UAE over all offences, regardless of circumstances. For our part, we had informed the UAE in our commentary that this was a prime area of concern for our nations and we adhered to the standard NATO provisions as set forth in our original document. After considerable repetition of these irreconcilable positions by their delegation head and me, I told him flat out that if the UAE stuck to its position on jurisdiction, the AWACS basing that both of our higher authorities want would not happen.

At that point, my interlocutor sought further guidance from his higher authority. When our talks resumed, there was a clear indication that they might be prepared to consider certain exceptions to their original position. We did not discuss specific text, but I promised to forward them proposals very soon, on a "no commitment" basis for both sides. We agreed that, while we lacked authority to agree to any compromise language, it was our responsibility as negotiators for our respective parties to develop language that might work, as an element of our task to conclude a

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mutually-acceptable framework for AWACS basing in the UAE. Our delegation concluded that we made progress in this area, in the sense that we believe the UAE is now open to consider modifying its initial stance, and finding middle ground on jurisdiction. But we do not believe, and I would ask you please not to expect, that the UAE will move too far if it will move at all. Apart from asserting confidence in its justice system and its obligation to administer justice in its territory, the UAE side emphasized that none of the bilaterals that the UAE has with NATO member nations accord anything near the level of derogation from UAE jurisdiction that NATO has been requesting. It was pointed out to us that at least some nations recognize full UAE jurisdiction for all offences, just as their draft text contained, and that other NATO nations have forces operating in the UAE without any agreement having been signed at all. While the discussion did not go into detail, nothing we heard from NATO embassy officials at the Turkish CPE contradicted those UAE assertions, and some of what we heard supported them.

So, to sum up where my delegation and I believe we stand after this round of negotiations: we are within reach ) not certain, but within reach ) of formulating a document that can meet basic standards to enable the early deployment of NATO AWACS aircraft to the UAE in support of ISAF. If developed, this will not be an ideal document ) we all would wish something more robust. But the fact is that no individual nation has succeeded in achieving a document of that level, and yet nations have decided to operate on a lesser basis in the UAE, and the UAE knows that.

We do not have visibility of bilateral agreements between NATO nations or partners and the UAE, but the UAE does. It will not offer NATO a Cadillac when individual nations have accepted a Chevrolet ) or indeed are willing to carry out operations in the UAE with no car yet delivered at all!

So our plan is this: I will distribute the draft document as

it stands following this last round of negotiations, and including a proposed discussion text on jurisdiction we have developed since last week to share with the UAE for its consideration on a mutual "no commitment" basis as I already described. At the same time I will forward that language to Abu Dhabi for UAE consideration. I would then like to return to this effort in the PC next Monday, with you having sought in the interim your nations' views on the text as it now stands so that we can have an informed discussion.

We foresee an opportunity for a further round of negotiations with the UAE during the first week of August, and we see the potential to finalize the document at that stage, ad ref of course pending NAC decision and the comparable UAE approvals. If that were to materialize, we believe that NATO could have AWACS on the ground in al-Ain fairly soon after.

However, achieving closure will require that nations adopt a flexible and pragmatic approach that balances legal and operational imperatives of the Alliance, and aligns the standards set for NATO to those of the nations.

The balance to be drawn is evident ) between the management of legal risk for the consistency of NATO agreements and for NATO personnel operating in the UAE, and the management of mortal risk for NATO's women and men, soldiers and airmen fighting on and over the ground in Afghanistan.

The deployment of AWACS is an urgent operational requirement, and it is becoming more urgent all the time. SACEUR and COMISAF have warned that there is very real risk of an aircraft accident in Afghanistan specifically as a result of the lack of nearly adequate radar and communications coverage, a risk which can be mitigated only by the prompt deployment of AWACS over Afghanistan. There is no ground-based option, and no other basing option for AWACS. Operations out of Konya are stymied by the lack of overflight clearances from Azerbaijan and Turkmenistan. Such clearances from Azerbaijan look unlikely, and Turkmenistan looks very

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unlikely at all.

The conclusion of an agreement with UAE is not merely our best chance of solving this problem, but very probably our only one. Embassy representatives we debriefed in Abu Dhabi agreed that the status and privileges challenges we are facing with UAE would be the same in talks with any other Gulf country, and probably more difficult.

So, as nations consider the status of the negotiating process and the kind of text which NATO can achieve ) and again, we think we can achieve a text quite soon ) we would ask that the focus be on balanced risk management for our forces operating in the UAE and those operating in and over Afghanistan. It seems to us that compromises must be made in balancing those two equities and that implies compromising with UAE, if they are willing to do so, on jurisdiction language. The alternative is likely no basing in UAE, no NATO AWACS support for ISAF, and no improvement of the dire air traffic situation that COMISAF and SACEUR have flagged.

This is a call for nations to make. We work for you. I ask that as you consider this with your capitals, you flag the operational as well as legal considerations framing these negotiations.

Let me add one final thought. The NAC agreed last Friday to the conduct of an assessment of AWACS capability in the counter piracy role. While the assessment can be conducted under bilateral arrangements, any decision to initiate further AWACS operations in that region will also require a basing solution. We have reason to believe after this visit that the UAE would be amenable to allowing NATO AWACS based there perform this mission also within the framework we are working here to conclude. As with support to ISAF, so also

for counter-piracy UAE basing may prove to be the best if not indeed the only operationally feasible option.

With that somewhat lengthy introduction, Martin, I turn the meeting back to you for discussion.

Thank you for your comments. I can only reiterate that we must balance the desire for a highly developed agreement with the urgent operational need. The question must be: "Is the type of agreement we can achieve adequate to allow us to meet NATO's overall requirements?" Management of risk must consider and balance the entirety of the risk the Alliance assumes in prosecuting the ISAF mission. Martin, thank you very much for hosting me. I look forward to resuming discussion of this matter next week.

End Text  
DAALDER